HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL No. 364 OF 2006

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Between:

K. Jayalakshmi

……Appellant

And

R. Dali Naidu and four others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri Kuriti Bhaskara Rao

Counsel for Respondent No.1 : Sri P. Shiva Kumar

Counsel for Respondent Nos.2 to 5 : Government Pleader for Civil Supplies

Dated: 10-04-2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 13.2.2006 passed by the learned Single Judge whereby she allowed the writ petition filed by respondent No.1 Sri R. Dali Naidu and quashed orders dated 27.1.2005 and 28.8.2005 passed by Joint Collector, Srikakulam District (respondent No.3) and District Collector, Srikakulam (respondent No.2) respectively and remitted the matter for fresh decision by respondent No.3.

There is no dispute between the parties that in furtherance of notice issued by respondent No.4, the appellant, respondent No.1 and others applied for appointment as authorised fair price shop dealer for Budathavalasa village. It is also not in dispute that after making evaluation of the comparative merits of the applicants, Revenue Divisional Officer, Srikakulam (respondent No.4) selected respondent No.1 and appointed him as the fair price shop dealer.

The appellant challenged the appointment of respondent No.1 by filing an appeal. She pleaded that respondent No.1 was not eligible to be appointed as fair price shop dealer because he had obtained loan under self-employment scheme from Andhra Bank for running kirana business and had not repaid the same. She further pleaded that being a physically handicapped female, she was entitled to be preferred over respondent No.1, more so because she was more qualified than him. Respondent No.1 was served with the notice of the appeal filed by the appellant, but he did not appear to contest the appeal. Respondent No.3 adjourned the case on one dozen occasions and then passed order dated
27-01-2005 cancelling the appointment of respondent No.1 by recording the following order:

> "The case was taken on file on 16.11.2000, since then notice have been serving on the respondent to attend either in person or his

counsel on 19.1.2002, 16.2.2002, 2.3.2002, 7.9.2002, 5.10.2002, 2.11.2002, 25.1.2003, 21.6.2003, 19.7.2003, 16.8.2003, 24.7.2004, 28.8.2004, 8.10.2004 and 22.1.2005.

In all these hearings except on one occasion i.e. on 16.2.2002, the counsel on behalf of respondent has just file his vakalat and no counter is submitted thereafter.

In view of the above and as there is no counter from the side of the respondent and as per the material available on record, I agree with the appellant contention of she being a lady and disability with 50% and having higher qualifications, she ought to have been selected as F.P. Shop dealer. The higher qualifications and merit always shall find preferential treatment in selection. As such I allow the appeal of the petitioner and set-aside the orders passed in Rc.867/2001 H dt.11.9.2001 of the Revenue Divisional Officer, Srikakulam and direct him to appoint Kum. M.Jayalaxmi D/o. Chinna Sanyasi as F.P.Shop dealer of Budathavalasa (V) of Laveru Mandal".

The revision filed by respondent No.1 was dismissed by District Collector, Srikakulam (respondent No.2) vide his order dated 28.8.2005 by observing that he was running kirana shop and was, therefore, not eligible to be appointed as fair price shop dealer.

In his two page order, respondent No.2 referred to the events leading to the selection and appointment of respondent No.1, the ground set out in the revision petition for questioning order dated 27-1-2005 passed by respondent No.3, arguments of the counsel for the parties and dismissed the revision by recording the following conclusion:

"Heard the arguments. Since running a Kirana Shop is

a bar for appointment of F.P.Shop, the order of the appellate authority is upheld. The respondent in this revision petition has to prove her ability to function as F.P.Shop dealer, otherwise she will be dismissed as Fair Price Shop dealer subsequently."

Respondent No.1 challenged orders dated 27-01-2005 and 28-08-2005 in Writ Petition No.5865 of 2005. He pleaded that order passed by respondent No.3 cancelling his appointment after a period of four years is vitiated due to violation of the rules of natural justice and non-application of mind. He also challenged the order passed by respondent No.2 on several grounds including the one that the same is devoid of reasons.

In the counter filed by her, the appellant reiterated the grounds taken by her for challenging the appointment of respondent No.1 as fair price shop dealer.

The learned Single Judge briefly referred to the pleadings of the parties, guidelines issued by the State Government vide G.O.Ms.No.53 dated 6-10-2003 for appointment of fair price shop dealers and concluded that respondent No.1 who possessed the minimum educational qualification could be appointed as fair price shop dealer. The learned Single Judge further held that in the absence of any evidence to show that respondent No.1 was doing kirana business, his appointment could not have been nullified by treating him ineligible. Accordingly, the learned Single Judge allowed the writ petition and remitted the matter to respondent No.3 herein for fresh adjudication of the appeal preferred by the appellant against the appointment of respondent No.1.

We have heard Sri Kuriti Bhaskara Rao and perused the record. In our opinion, the reasons assigned by the learned Single Judge for setting aside the orders impugned in the writ petition do not suffer from any infirmity. Rather, we are in complete agreement with

the learned Single Judge that appointment of respondent No.1 could not have been set aside only on the ground that the appellant was more qualified than him. We also agree with the learned Single Judge that respondent No.1 could not be disqualified on the ground of his doing kirana business because no evidence had been produced by the appellant to substantiate this allegation.

There is another reason for our disinclination to interfere with the order of the learned Single Judge i.e., failure of respondent Nos.3 and 2 to record cogent reasons for nullifying the appointment of respondent No.1 as fair price shop dealer. A reading of order dated 27-1-2005 shows that respondent No.3 cancelled the appointment of respondent No.1 only on the ground that being a physically handicapped female and more qualified than respondent nO.1, the appellant was entitled to the preferred. While doing so, the officer concerned overlooked the fact that respondent No.1 fulfilled the minimum qualification prescribed by the government for appointment as fair price shop dealer. He also overlooked the fact that no evidence had been adduced by the appellant to prove the charge that respondent No.1 was doing kirana business. Similarly, while dismissing the revision petition, respondent No.2 recorded a cryptic observation that respondent No.1 was running kirana shop, and, therefore, he was not entitled to function as fair price shop dealer. In our opinion, the orders passed by respondents 2 and 3 were cryptic to the core and the learned Single Judge would have been fully justified in nullifying the same on the ground that they do not satisfy the test of speaking order.

For the reasons stated above, the appeal is dismissed.

While dismissing the appeal, we deem it proper to take cognizance of the statement made by the learned counsel for the appellant that respondent No.3 has not passed appropriate order in

compliance of the direction given by the learned Single Judge. If that be so, the officer concerned is ordained to pass appropriate order within next three weeks failing which the appellant shall be free to file an application before this Court for initiation of contempt proceedings against him under the Contempt of Courts Act, 1971.

G.S.SINGHVI, CJ

P. LAKSHMANA REDDY, J

10-04-2006
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